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NAPHCARE, INC. and  
LARRY WILLIAMSON, M.D.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\*v\*

FRANK PATRICK BIRCH, JR.,

Plaintiff,

vs.

JOE LOMBARDO, SHERIFF, CLARK  
COUNTY, NV; NAPHCARE, INC.,  
\_\_\_\_\_ WILLIAMSON, M.D., DOES 1-50,

Defendants.

Case No. 2:16-cv-01051-RFB-CWH

**ORDER GRANTING DEFENDANT  
NAPHCARE AND LARRY  
WILLIAMSON'S MOTION FOR  
ENTRY OF A PROTECTIVE ORDER  
REGARDING CONFIDENTIALITY**

This matter is before the Court on NaphCare and Larry Williamson M.D.'s Motion for Entry of a Protective Order Regarding Confidentiality. Based upon a review of said Motion and all relevant filings related thereto, this Court GRANTS said Motion. As such, it is herein submitted that NaphCare, Inc. and the Las Vegas Metro Police Department are entitled to the protections described below.

1. As used in this Protective Order, the term "confidential information" means any documents, testimony, or other information that is produced from the date of this agreement forward, including: policies and procedures which are used to govern the provision of

1 healthcare services to the inmates at the Clark County Detention Center (CCDC) and  
2 maintaining its business practices, including the healthcare rendered at the CCDC and has been  
3 designated as "CONFIDENTIAL". In addition, the CCDC policy documents bates numbered  
4 000620-000851 which have already been produced are also confidential.

5 2. The term "disclosure" shall include the dissemination, communication,  
6 publication or reproduction of any confidential material or the specific contents of the  
7 information contained therein, or the communication of any estimate or other information which  
8 facilitates the discovery of confidential information. Should any pleading with the Court require  
9 reference or attachment of any confidential information, the parties shall first request leave to file  
10 the document under seal, as further defined in Paragraph 11 below.

11 3. As used in this Protective Order, the term "qualified persons" means (i) counsel of  
12 record for the parties to the litigation, including office associates, paralegals, and stenographic  
13 and clerical employees to whom disclosure is reasonably necessary; (ii) experts retained for the  
14 purpose of this litigation to whom disclosure is reasonably necessary and who reviewed and  
15 signed a copy of this Stipulation; (iii) parties to this action; and (iv) court personnel, including  
16 stenographic reporters engaged in such proceedings as are necessarily incident to this litigation.

17 4. Confidential information shall be and remain confidential, and, except as allowed  
18 by this Protective Order, may not be disclosed or communicated, nor used for any purpose other  
19 than this litigation, including any appeals.

20 5. Any and all documents containing confidential information must be retained by  
21 counsel and/or Plaintiff in Proper Person, and not be disclosed or made available to any person  
22 other than a qualified person who has read and acknowledged the terms of this Protective Order.  
23 Similarly, the confidential information contained within those documents may not be disclosed  
24 to any person other than a qualified person. To the extent reasonably necessary, copies of

1 confidential documents may be provided to experts retained for the purpose of this litigation to  
2 whom disclosure is reasonably necessary and who have signed this Stipulation and Protective  
3 Order. Nothing in this Protective Order shall in any way affect the admissibility or use at trial of  
4 any of the documents produced under this Protective Order.

5 6. Any person who is in possession of confidential information, or to whom  
6 confidential information is disclosed, is responsible for ensuring that such confidential  
7 information is not inadvertently disclosed by him or her. Failure to take all reasonable  
8 precautions to ensure against such inadvertent disclosure will be viewed by the Court as willful  
9 disobedience of this Protective Order, and will be punished accordingly.

10 7. Counsel or parties receiving confidential information may not disclose that  
11 confidential information to any expert without first furnishing to that expert a copy of this  
12 Stipulation and Protective Order and obtaining a signed copy of this Stipulation and Protective  
13 Order from that expert.

14 8. Any person who executes a copy of this Stipulation and Protective Order submits  
15 to the jurisdiction of this Court for purposes of enforcement of this Protective Order, either prior  
16 to or following trial of this action. Jurisdiction of this action is to be retained by this Court after  
17 final determination for purposes of enabling any party or persons affected by this Protective  
18 Order to apply to the Court for such direction or further decree as may be appropriate for the  
19 construction or enforcement of this Protective Order, or for such additional relief as may become  
20 appropriate.

21 9. If any party objects to the designation by the disclosing Defendant of a document  
22 or item, pleading, or transcript of testimony as "CONFIDENTIAL", he shall give notice of the  
23 same to Defense Counsel in writing of the document, pleading, and/or testimony at issue and the  
24 reason for the objection. The disclosing Defendant shall thereafter have twenty (20) business

1 days within which to apply to the Court for appropriate protection of the document, pleading,  
2 and/or testimony pursuant to the Federal Rules of Civil Procedure. If the disclosing Defendant  
3 does not make application within twenty (20) business days after receipt of the written objection  
4 of a party (or within the stipulated time period if stipulated to be longer or shorter than twenty  
5 (20) days), then the documents, pleadings, and/or testimony at issue shall no longer be deemed  
6 "CONFIDENTIAL". However, until expiration of the twenty (20) day time period (longer or  
7 shorter if stipulated) or until the Court enters an order changing the designation, whichever is  
8 later, the information shall continue to be given the "CONFIDENTIAL" treatment initially  
9 assigned to it and provided for in this Order.

10 10. If any individual is making copies of any confidential information allowed by this  
11 agreement, said individual must ensure that the copies are also marked "Confidential."

12 11. Any person who wishes to file with this Court any document, paper, or other  
13 tangible item disclosing confidential material may disclose only those confidential materials that  
14 are necessary to support the pleading, motion or other paper to which the confidential document,  
15 paper, or other tangible item is attached, and must first attempt to contact counsel for NaphCare,  
16 Inc. or Lombardo as the case may be, in an attempt to reach an agreement/Stipulation regarding  
17 whether filing the document should be under seal. If such contact is not possible, the filing party  
18 must provide said counsel with a description of the contacts attempted and/or the basis for not  
19 contacting the undersigned. The parties to this agreement understand that is a "strong  
20 presumption in favor of access." A party seeking to seal a judicial record at trial and/or the  
21 dispositive motions stage bears the burden of establishing "compelling reasons" by "articulating  
22 compelling reasons supported by specific factual findings," that outweigh the public policies  
23 favoring disclosure. Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-79 (9th  
24 Cir. 2006).

12. Nothing in this Protective Order precludes the deposition examination of any person regarding confidential information of which they have knowledge. In any such deposition, the disclosing Defendant may designate specific testimony deemed to be "CONFIDENTIAL" by advising the court reporter of such fact prior to the conclusion of the deposition. The reporter shall mark the face of the transcript "CONTAINS CONFIDENTIAL INFORMATION." All transcripts of said deposition containing confidential information will be treated in accordance with this Protective Order, wherein if any portions of the deposition transcript containing confidential material is to be filed with the Court, Paragraph 11 should be observed.

13. Only qualified persons as defined in Paragraph 3 above may attend deposition examinations in this case, unless all parties or their counsel agree otherwise.

14. The parties taking any deposition shall retain a court reporter who agrees that before transcribing any such testimony, that all testimony containing confidential information is and shall remain confidential and shall not be disclosed except as provided in this Protective Order and that copies of any transcript, reporter's notes, or any other transcription records of any such testimony will be retained in absolute confidentiality and safekeeping by such shorthand reporter or delivered to attorneys of record or filed with the Court.

15. If, during trial, any party intends to introduce into evidence any information designated as "CONFIDENTIAL," he/she shall give timely notice of that intention to the Court and all counsel, and the Court may take such steps as it shall deem reasonably necessary to preserve the confidentiality of such information, without violating any statute or other rule of the Court.

16. Nothing in this Protective Order requires a party to disclose confidential information that the party also contends is protected from disclosure based upon a privilege

(including but not limited to HIPAA rights of others) or for some reason other than the mere confidential or proprietary nature of the document or information (including but not limited to non-discoverable trade secrets).

17. Upon the final determination of this action, counsel and all qualified persons shall return any confidential information to counsel for NaphCare and Lombardo, upon their request, together with any copies of confidential information. Transcripts containing confidential information also must be returned to the requesting Defense Counsel.

18. Anyone found to be in violation of this Protective Order may have sanctions imposed against him or her as the Court may determine and allowable under law and may also be subject to contempt of court proceedings.

Dated this 6th day of December, 2017.

  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, have read in its entirety and understand the Protective Order that was issued by the United States District Court, for the District of Nevada on \_\_\_\_\_, 201\_\_, in the case of *Birch v. Sheriff Lombardo, et al*, Case No. 2:16-cv-01051-RFB-CWH. I agree to comply with and to be bound by all terms of this Protective Order and I understand and acknowledge that failure to do so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order that any person or entity except in strict compliance with the provisions of this Order. Further, I solemnly promise that I will not offer to sell, advertise or publicize that I have obtained any Protected Material subject to this Protective Order. At the conclusion of this matter, I will return all Protected Material which came into my possession to counsel for the party from whom I received the Protected Material, or I will destroy those materials. I understand that any Confidential Information contained within any summaries of Protected Material shall remain protected pursuant to the terms of this Order. I further agree to submit to the jurisdiction of the United States District Court, for the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I certify under the penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_

City and State where signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_